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In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 310

THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

STATEMENT

Appellant sued to recover $11,818.08—the aggregate of seven items. Two were abandoned as barred by the statute of limitations (Tr. 8) and two were relinquished as having been paid (Tr. 7, 8). Three remain in dispute.

G-480

1. This claim arose under bill of lading for $2,549.08 and on May 10, 1920, settlement was made by the Auditor for the War Department after a

reduction of $1,692.96, in order to allow for the carriage of military impedimenta under a tariff on which " associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects on the basis generally of one car free to each 25 passengers " (Tr. 4, 7), in pursuance of ruling of the Comptroller of the Treasury (*Louisville & Nashville Railroad,* June 18, 1918, 24 Decisions of Comptroller, 774; *St. Louis, Brownsville & Mexico Railway Co.*, October 31, 1918, 25 Decisions of Comptroller, 354).

Without objection or protest the amount allowed by the Auditor was accepted by the appellant and no appeal to the Comptroller for revision of the Auditor's settlement was ever taken.

For the reversal of the opinion and judgment of the Court of Claims holding that the claim was settled, counsel for appellant argue that protest was unnecessary; that appellant is not foreclosed by the settlement; that the Court of Claims has cut the six years' statute of limitations (Br. 10), and that the deduction and settlement on May 10, 1920, were made " when the question of the right of the Government to the free baggage car tariffs was very much in controversy." (Tr. 8.)

The claim arose October 26, 1916 (Tr. 8), the Auditor settled in May, 1920, and the suit was commenced on August 22, 1922.

ARGUMENT

THE ACCEPTANCE OF THE PAYMENT OF THE UNLIQUIDATED ACCOUNT WITHOUT PROTEST OR OTHER MANIFESTATION OF INTENTION TO MAKE FURTHER CLAIM FORECLOSES THE RIGHT OF THE APPELLANT TO MAINTAIN THE SUIT

The so-called Dockery Act approved July 31, 1894 (28 Stat. 206), provides:

> SEC. 7. Accounts shall be examined by the Auditors as follows:
>
> * * * * *
>
> Second. The Auditor for the War Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War.
>
> * * * * *
>
> SEC. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the

head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: *Provided,* That the Secretary of the Treasury may, when in his judgment the interests of the Government require it suspend payment and direct the reexamination of any account.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division of Bookkeeping and Warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster General.

Any person accepting payment under a settlement by an Auditor shall thereby be precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are

> finally settled a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision: *Provided,* That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this Act. (28 Stat. 207, 208.)

Twice in its opinion the Court of Claims emphasized the argument of apellant that the right of the Auditor for the War Department to make deduction " was very much in controversy " (Tr. 8, 9). For that reason if for no other, if appellant was not satisfied it should have protested the settlement. Accepting settlement with the disallowance without protest of items " very much in controversy " is a crumbling foundation on which to base a suit. An efficient Auditor would naturally not allow such claims. A claim which " is very much in controversy " is unliquidated. A liquidated claim is not " very much in controversy." *Century Dictionary: liquidate:* to clear up, reduce to order or precision; settle the particulars of; adjust; as to liquidate the affairs of a bankrupt firm. To clear off; settle; pay: as, to liquidate a debt or mortgage; *unliquidated:* not liquidated; not settled; unadjusted: as an unliquidated debt; unliquidated accounts.

In *Fleckner* v. *United States Bank*, 8 Wheat. 338, 362, Mr. Justice Story, in delivering the opinion of the court, said:

> Some criticism has been employed on the meaning of the word "liquidate," in the resolution above stated. It is said to mean not a payment, but an ascertainment of the debts of the bank. We think otherwise. Its ordinary sense, as given by lexicographers, is to clear away, to lessen debts. And in common parlance, especially among merchants, to liquidate a balance means to pay it; and this, we are satisfied, was the sense in which the words were used in this resolution; and, consequently, that the appropriation of this note to the payment of the debt, was within the scope of the authority given to the president and cashier.

The acceptance without protest of the Auditor's allowance and the failure at the time to give notice of intention to make further claim forecloses recovery now. Able counsel for appellant make no claim of fraud or mistake. The statute alone is sufficient. The adjudicated cases are likewise against the appellant.

Opposing counsel argue (Br. 17) there is nothing in the findings "to lead to the conclusion that the settlement made by the Auditor for the War Department was 'on condition' that the amount paid must be accepted as in full satisfaction, or that the plaintiff accepted it in full satisfaction, or that the Auditor had any authority or any idea of imposing such a condition." But under the

statute the responsibility for imposing the "on condition" rested with the appellant and not with the Auditor. Bill No. G–480 was an "*item*" for $2,549.08. It so appears in appellant's petition; it is so designated in the findings (Tr. 6); it never was anything else. Section 8, *supra*, provides "any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement *as to any items* upon which payment is accepted."

In *Oregon-Washington Railroad Co.* v. *United States*, 255 U. S. 339, 346, this Court, speaking through Mr. Justice McKenna, said:

> Counsel seem to make a merit of this uncomplaining and unresisting acquiescence and observe that the Government by it obtained the advantage of the plea of the statute of limitations. The fact is significant. It is inconsistent with the reservation of a right and an intention to subsequently make a judicial assertion of it. Creditors are not usually so indulgent and the appellant had remedies at hand. The courts were open to it, certainly protest was open to it. Its explanation for this non-action is not satisfactory. "It is advised and believes," is its allegation, and now its contention, that "its auditors and agents were led and constrained to render its bills and vouchers . . . at tariff rates with land-grant deductions, because said shipments were for the Quartermaster's Department of the Army and upon *Government* bills of lading which in terms are only applicable to 'Gov-

ernment property' and 'public property,' *and also (because) the Comptroller of the Treasury (whose decisions are by law made final and controlling upon the Executive Departments of the Government) had held that such transportation, upon Government bills of lading, when within the amount authorized to be transported by Departmental regulations at the expense of the Government, was quasi-public property and entitled as such to land-grant rates,"* and that it did not intend to waive its right to payment in full or to sue, "if so advised," for the balances due "so far as the same were not barred by the statute of limitations."

The italics are counsel's and we repeat them as they give emphasis to counsel's conviction of the justification of the excuse. We do not share it. The mere mechanism of the bills of lading or their false designations of the property transported could not have imposed on anybody, certainly not on "the auditors and agents" of a railroad company; and the decisions of the Comptroller were as much open to dispute then as now and resort to suit an inevitable prompting, and yet, we have seen, the statute of limitations was permitted to interpose its bar. The excuse of appellant is hard to credit. Its "auditors and agents" were not ignorant of affairs, nor unpractised in the controversies of business, and the means of their settlement. The auditors and agents of railroad companies are not usually complaisant to denials of the rights of the com-

panies they represent. We do not say this in criticism, for such is their duty, the necessary condition of their places.

We are forced, therefore, to conclude that appellant's non-action was deliberate, based upon a consideration of its advantages, with no thought of ultimate assertion against the decision of the Government until stirred to acquisitiveness by the decision in the *Chicago, Milwaukee & St. Paul Case,* a decision which we may say, in passing, was declared by the Court of Claims to have been improvidently given. *Baltimore & Ohio R. R. Co.* v. *United States,* 52 Ct. Clms. 468.

The case therefore falls within the rulings of *United States* v. *Bostwick,* 94 U. S. 53; *Baird* v. *United States,* 96 U. S. 430; *Railroad Company* v. *United States,* 103 U. S. 703; *Central Pacific R. R. Co.* v. *United States,* 164 U. S. 93. And they have supplemental force in *United States,* v. *Edmonston,* 181 U. S. 500; *Utermehle* v. *Norment,* 197 U. S. 40.

Citing cases, Mr. Justice Butler, speaking for the Court on March 2, 1925, said: "Appellant did not protest against any land-grant deductions. It is bound by its acquiescence and consent and cannot recover the amounts deducted." *Louisville & Nashville* v. *United States,* No. 29.

In *Pacific Railroad* v. *United States,* 158 U. S. 118, 121, the Company accepted a certain sum in full satisfaction of a judgment and subsequently sued to recover interest; this court denied right of recovery, citing *Stewart* v. *Barnes,* 153 U. S. 456, in

which this court held that when a person from whom an internal revenue tax had been illegally exacted, accepted from the Government the precise amount of the sum thus illegally exacted, he thereby gave up his right to sue for interest as incidental damages; and *De Arnaud* v. *United States,* 151 U. S. 483, where it was held that the receipt by a claimant against the United States for a sum less than he had claimed, paid him by the disbursing agent of a department " in full for the above account," is, in the absence of allegation and proof that it was given in ignorance of its purport, or in circumstances constituting duress, an acquittance in bar of any further demand—citing *Baker* v. *Nachtrieb,* 19 How. 126, and *United States* v. *Childs,* 12 Wall. 232.

The leading case of *Chicago, Milwaukee & St. Paul Railway* v. *Clark,* 178 U. S. 353, 368, 369 is cited by the Court of Claims in its opinion (Tr. 9). There a contractor who had constructed part of the railroad failed to complete the work by a certain stipulated day; disputes arose in the settlements and on the payment of a certain sum he executed a full release; later he sued on the disputed claims and recovered judgments in the lower courts; in reversing, this Court, speaking through Mr. Chief Justice Fuller, citing *Baird* v. *United States,* 96 U. S. 430, to the effect that " if the debt be unliquidated and the amount uncertain," * * * " the question is whether the payment

was in fact made and accepted in satisfaction," said:

> Without analyzing the cases, it should be added that it has been frequently ruled by this court that a receipt in full must be regarded as an acquittance in bar of any further demand in the absence of any allegation and evidence that it was given in ignorance of its purport, or in circumstances constituting duress, fraud, or mistake. *De Arnaud* v. *United States,* 151 U. S. 483; *United States* v. *Garlinger,* 169 U. S. 316, 322; *United States* v. *Adams,* 7 Wall. 463; *United States* v. *Child,* 12 Wall. 232; *United States* v. *Justice,* 14 Wall. 535; *Baker* v. *Nachtrieb,* 19 How. 126.
>
> The general principle applicable to settlements was thus expressed by Mr. Justice Clifford, in *Hagar* v. *Thomson,* 1 Black, 80, 93: "Much the largest number of controversies between business men are ultimately settled by the parties themselves; and when there is no unfairness, and all the facts are equally known to both sides, an adjustment by them is final and conclusive. Oftentimes a party may be willing to yield something for the sake of a settlement; and if he does so with a full knowledge of the circumstances, he can not affirm the settlement and afterwards maintain a suit for that which he voluntarily surrendered."

In *De Arnaud* v. *United States,* 151 U. S. 483, it was held that a receipt signed by a claimant for a

sum less than he had claimed " in full for the above account " is a bar to any further demand.*

In *Merritt* v. *Cameron,* 137 U. S. 542, 551, the importer brought suit to recover duties alleged to have been illegally exacted; the collector had ascertained the amounts and the taking of such other steps as the law called for; holding that the ten days within which an importer is allowed to protest against the liquidation of duties begin to run upon their ascertainment and liquidation, that protest subsequent thereto came too late, this court in reversing the judgment, said:

> Upon a careful examination of the question at issue, we are of opinion that the ascertainment and liquidation of the duties upon merchandise entered in bond for warehouse may take place at any time after the original entry of the merchandise, and that it is not required to be delayed until the importer chooses to withdraw his goods for consumption. The ten days referred to in section 2931, within which the importer is allowed to protest, begin to run upon such ascertainment and liquidation of the duties;

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* Maj. Gen. John C. Fremont employed Charles de Arnaud for secret service in the Civil War. In advance of the arrival of Confederate troops General Grant took possession of Paducah, Ky., on information furnished by De Arnaud. The latter sued for $100,000 for services rendered as a "military expert." In another case under a contract made with President Lincoln one Lloyd had rendered valuable services as a spy and recovery for additional compensation had been denied to his administrator because of a settlement. Declining to distinguish the *Lloyd case,* Mr. Justice Shiras said: "We are relieved from considering whether the new-fangled term 'military expert' is only an old 'spy,' 'writ large.'"

and, therefore, the protest in the case at bar was too late.

In *Hennessy* v. *Bacon*, 137 U. S. 78, 85, this Court, speaking through Mr. Justice Harlan, said:

> It is the case of the compromise of a disputed claim, the parties dealing with each other upon terms of perfect equality, holding no relations of trust or confidence to each other, and each having knowledge, or having the opportunity to acquire knowledge, of every fact bearing upon the question of the validity of their respective claims. *Cleaveland* v. *Richardson*, 132 U. S. 318, 329. Such a settlement ought not to be overthrown, even if the court should now be of opinion that the party complaining of it surrendered rights that the law, if appealed to, would have sustained.

See also *French* v. *Shoemaker*, 14 Wall. 314, 333, 334; *Baird* v. *United States*, 96 U. S. 430; *De Wolf* v. *Hays*, 125 U. S. 614; *Coburn* v. *Cedar Valley Land Co.*, 138 U. S. 196, 216.

In *United States* v. *Cousinery*, 25 Fed. Cases, 677, 679 (Case 14,878) District Judge Blatchford said:

> It is contended, for the defendants, that there was no decision of the collector made in this case, within the meaning of the statute. The evidence at the trial showed that everything was done in this case in respect to the ascertainment and liquidation of the duties by the proper officers of the customs, which is ever done in any case, to perfect and indicate and record such ascertainment and liquidation. The

usage and practice of the collector's office was shown, to which the proceedings in this case conformed. The 14th section of the act of 1864 uses the phrase "decision of the collector of customs," and the phrase " ascertainment and liquidation of the duties by the proper officers of the customs," as synonymous phrases. The decision of the collector is declared to be conclusive, unless the party, if dissatisfied with his decision, gives notice thereof " within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs," and also, " within thirty days after the date of such ascertainment and liquidation," appeals "therefrom " to the secretary of the treasury. Such ascertainment and liquidation of the duties by the proper officers of the customs, that is, the proper officers in the collector's office or department, is the decision of the collector. An appeal from such ascertainment and liquidation is an appeal from the decision of the collector, and an appeal from the decision of the collector is an appeal from such ascertainment and liquidation. Congress must be assumed to have been legislating in reference to a well understood course of business, conducted under the revenue laws, when it speaks of " the ascertainment and liquidation of the duties by the proper officers of the customs," and to have intended that, when the duties were ascertained and liquidated in the usual manner by such officers, and the usual indicia thereof by checks and stamps were placed on the usual

> papers in the collector's office, such transaction was the decision of the collector of customs in the premises. See Act March 2, 1799, §§21, 49 (1 Stat. 642, 664).

In *Savage* v. *United States,* 92 U. S. 382, 388, this Court, speaking through Mr. Justice Clifford, stated the controlling rule as follows:

> Parties having claims against the United States, which are disputed by the officers authorized to adjust the same, may compromise the claim, and may accept payment in a different medium from that promised, or may accept a smaller sum than that claimed; and where it appears that the claimant voluntarily entered into a compromise, and accepted payment in full in a different medium from that promised, or accepted a smaller sum than that claimed, and executed a discharge in full for the whole claim, or voluntarily surrendered to the proper officer the evidences of the claim for cancellation, he cannot subsequently sue the United States, and recover in the Court of Claims for any part of the claim voluntarily relinquished in the compromise. *Sweeny* v. *United States,* 17 Wall. 77; *United States* v. *Child,* 12 id. 244; *United States* v. *Justice,* 14 id. 549.
>
> Decisions of the kind by this court are quite numerous, and they show beyond all doubt that parties may adjust their own controversies in their own way, and that when they do so voluntarily, and with a full knowledge of their rights and all the circum-

stances, no appeal lies to the courts to review their mutual decision. Courts can not make contracts for parties; and if parties understandingly contract to adjust a controversy between them in a particular way, and actually execute the contract, they are both bound to regard the controversy as at an end.

The language of the Court of Claims is appropriate (Tr. 9):

> The auditor's action is final and conclusive upon the executive branch. The policy of the statute should not be ignored and should have some consideration when a party whose accounts have been settled by the proper auditor appeals to the court, for an additional amount to that received upon the auditor's certificate. The plaintiff's argument that when the deduction was made from its bill by the auditor the question of the right to make it "was very much in controversy" does not show sufficient reason for accepting the auditor's conclusion without any attempt to secure its revision by the comptroller or for its failure to signify any timely objection to this conclusion. As to these controverted items the plaintiff's account may be treated as unliquidated and its acceptance of the undisputed items a settlement of the entire claim. See *Chicago, Milwaukee & St. Paul Railway Co.* v. *Clark*, 178 U. S. 353, 367; *Savage case*, 92 U. S. 382, 388; *Pacific Railroad Company case*, 158 U. S. 118, 122.

This court in the case of Texas & Pacific Railway Company, 57 C. Cls. 284, 293, commented on the effect of the receipt of an allowance by an auditor and failure to protest against the disallowance of part of it, saying "there must be a time when public accounts are to be deemed settled; a time, without reference to statutes of limitation, when it may be assumed that settlements made are final, and it must be as early as circumstances will permit. That ordinarily will occur when, after an auditor's settlement, the allowance made is paid and payment accepted without any action or circumstances repudiating the idea of an acceptance of the settlement as final." The question was again presented in Atchison, Topeka & Santa Fe Railway Company case, No. B–90, decided November 5, 1923, and it was concluded that acceptance of payment under the auditor's allowance of part of the asserted claim without protest or some other action clearly indicating nonacquiescence in such settlement would bar further prosecution of the claim. While these and other cases recognize the right of parties to apply to the courts in proper cases, it is not unreasonable to require them to make known to the auditor or comptroller, in some appropriate way, the purpose, if there be any, to further prosecute their demands, notwithstanding the action of these officials. In such case the latter acting for the Government could either withhold any voucher or authorize payment of the part allowed and

> have some notice of the proposed further prosecution of the claim. As already stated, there must be an end of accounting. Texas & Pacific Railway Company case, 57 C. Cls. 284, 293. The failure to indicate that the acceptance of the auditor's allowance was under protest and with a purpose to proceed further bars recovery in this suit. The claim was settled.

In *Savage Arms Corporation* v. *United States,* 266 U. S. 217, this Court, speaking through Mr. Justice Sutherland, said:

> The attempted reservation came too late. Either it was a mere afterthought or there was a concealment of purpose, on the part of appellant during the negotiations, amounting to bad faith. Whether the agreement was made reluctantly, or appellant got the worst of the bargain, are matters unnecessary to be considered. It is enough that, without fraud or coercion, it did agree.

In *United States* v. *Cramp,* 206 U. S. 118, 128, this Court, speaking through Mr. Justice Brewer, said: " If parties intend to leave some things open and unsettled, their intent so to do should be made manifest."

As late as March 2, 1925, this Court re-affirmed the effect to be given to settlement of disputed claims. (*The St. Louis, Kennett & Southeastern Railroad Company* v. *United States,* No. 229, this Term; *Cairo, Truman & Southern Railroad Company* v. *United States,* No. 230, this Term, per Mr. Justice Brandeis.

2. The findings show that on September 20, 1920, this appellant filed petition No. 34697 in the Court of Claims in which the foregoing items (No. 3055 for $1,257.50; No. 4732 for $525) were included in the aggregate sums claimed. Based on a stipulation of the parties that Court made findings of fact and judgment went for $22,624.78, which was paid (Tr. 7). Those findings showed that " the numbers and amounts referred to in the foregoing paragraphs constitute the component parts and sum total of the said $22,624.78, and are the *only items in question in the case at bar.*" In those findings No. 3055 and No. 4732 are not mentioned. The report of the Treasury Department filed in that case and upon which the stipulation of facts was based stated that because no deduction had been made " from these bills on account of the cause of complaint set forth in petition nothing is due in recovery."

In the instant case the items reappeared in enlarged amounts, No. 3055 for $2,604.34 and No. 4732 for $566.80. Holding that these items were included in the former petition as " They were stated in the petition " and " The question is set at rest by section 178, Judicial Code," the Court of Claims dismissed the petition.

ARGUMENT

THE INCLUSION OF THE ITEMS IN THE FORMER PETITION ON WHICH JUDGMENT WAS STIPULATED AND PAID WITHOUT RESERVATION FORECLOSES THE RIGHT OF THE APPELLANT TO MAINTAIN THE SUIT

Opposing counsel say they rely on *Spicer* v. *United States,* 5 Ct. Cls. 34 and *Book* v. *United States,* 31 Ct. Cls. 272, for reversal.

The Judicial Code provides:

> SEC. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy. (36 Stat. L. 1141.)
>
> SEC. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy. (36 Stat. L. 1141.)

Observe the repetition of the almost identical words, "shall be a full discharge * * * of all claim and demand touching any of the matters involved in the controversy" and "shall forever bar any further claim or demand * * * arising out of the matters involved in the controversy." That items No. 3055 and No. 4732 were included in No. 34697 is not denied. The payment of the $22,624.78 was in satisfaction of a judgment entered on a stipulation of facts for the settlement of

that case. The very basis for sections 178 and 179 is set forth in the *Spicer* case, thus (5 Ct. Cls. 37):

> At the time when this court was invested with judicial power, it had become the custom of claimants in and about Congress so soon as they procured relief to immediately seek more. Thus, on the claim of Fisher, of which the history is given in *Gordon's Case* (1 C. Cl's. R., p. 1), there was first allowed $8,873 for property destroyed by United States troops; then $100 for an error of calculation in the first "award"; then $8,997.94 for interest; then $10,004.89 for more interest; then $39,217.50 for property previously found *not to have been destroyed by United States troops;* and finally $66,519.85 on a "*revision*" of the previous awards. The provisos cited from the act of 1863 were probably inserted to prevent such legislative leniency from being misinterpreted into a rule of judicial action.

In the *Spicer* case the Court of Claims declined to hold that where a judgment rendered on demurrer, alleging the want of a material fact in the declaration, shall be a bar to a second action presented by a declaration wherein the material fact omitted from the first is sufficiently averred (5 Ct. Cls. 37).

In *Book* v. *United States,* 31 Ct. Cls. 272, the case had been pending for a long time awaiting the decision of the Supreme Court in other cases involving the same question of law. The case was dismissed on motion of the Attorney General "as a

neglected case under Rule 24." Upon learning of the dismissal claimant moved to reinstate the case and the motion was granted without argument. The plea of *res adjudicata* was overruled and claimant recovered.

Neither the *Spicer* case nor the *Book* case has any bearing on the instant case.

In *Vaughn* v. *United States,* 34 Ct. Cls. 342, cited by the Court of Claims in the instant case, by stipulation claimant accepted $211.57, allowed by judgment of the Court of Claims, which " shall be without prejudice to the motion by claimant for an additional allowance." Subsequently, claimant moved to set aside the judgment and grant a new trial claiming that by newly discovered evidence he was entitled to a judgment for $305.69. On the authority of *United States* v. *Frerichs,* 124 U. S. 315, 320, the Court of Claims held that under the foregoing statute it was without jurisdiction to entertain the motion.

In the latter case this Court said (124 U. S. 320):

> The payment of the amount of judgment would *ipso facto* satisfy the demand of Frerichs against the United States, because it is provided by § 1092 of the Revised Statutes that " the payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law," " shall be a full discharge to the United States of all claim and demand

touching any of the matters involved in the controversy."

CONCLUSION

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,
Solicitor General.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

○